



DEPARTMENT OF JUSTICE

Antitrust Division

THOMAS O. BARNETT

Assistant Attorney General

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August 10, 2006

Kenneth P. Ewing, Esq.
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036-1795

Dear Mr. Ewing:

This letter responds to your request for the issuance of a business review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6. You have requested a statement of the Antitrust Division's current enforcement intentions with respect to a proposal by your client, the American Trucking Associations, Inc. ("ATA"), to develop and publicize model agreements between motor carriers and freight transportation brokers.¹

The ATA is the national trade association representing the interests of motor carriers, state trucking associations, and national trucking conferences. You have stated that the ATA would like to develop and publicize two model agreements between motor carriers and freight transportation brokers – a long-form "Model Broker-Carrier Agreement" and a "Short-Form Model Broker-Motor Carrier Agreement" (collectively, the "Model Broker Agreements") – to help increase efficiency in contract negotiations and reduce transactional costs for all parties. According to your representations, the Model Broker Agreements will be made available to ATA members to use on a voluntary basis at their sole discretion. Motor carriers and brokers will be free to choose whether to use any of the agreements' individual provisions or the agreements in their entirety.

You indicate that all terms in the Model Broker Agreements for rates and charges, including the basic freight charge, mileage charge, fuel surcharges, loading and unloading

¹ In 2002, the ATA requested, and received, a favorable business review letter for a similar proposal to develop and circulate a model contract for use by motor carriers and shippers. (See Business Review Letter issued to American Trucking Associations on November 15, 2002.) The ATA later finalized and published on its website, in conjunction with the National Industrial Transportation League, a "Model Truckload Carrier/Shipper Agreement" in November 2004.

charges, detention clauses and drop clauses, would be left blank for each carrier to negotiate individually with brokers. Likewise, non-rate terms that address the geographic scope, commodities covered, invoicing and payment, carrier insurance and broker bonds, and dispute resolution would be left blank for each carrier to negotiate separately with brokers. You also claim that the Model Broker Agreements will not cause or increase the likelihood of competitors sharing competitively sensitive information.

You contend that there is little, if any, likelihood that the Model Broker Agreements would adversely affect competition. Instead, you claim that the creation of the Model Broker Agreements will have several procompetitive benefits. You represent generally that the Model Broker Agreements can reduce the costs of negotiating contracts and of dispute resolution. You claim that the Model Broker Agreements will make alternative contract terms easily available to smaller brokers who may regularly deal with only a few carriers, and may enhance all brokers' ability to negotiate for different terms when dealing with carriers using their own forms or offering variations from the Model Broker Agreements' terms. You also claim that the Model Broker Agreements will lower barriers to entry by allowing new freight brokers to concentrate their limited resources on tasks other than developing contract forms. Finally, you claim that use of the Model Broker Agreements may increase competition among trucking companies by reducing the costs of changing carriers by simplifying brokers' comparisons among carriers. In addition, the spread of standard contract language may also simplify and facilitate interlining between carriers, allowing smaller or regional carriers to expand their reach and thus be better able to compete with larger or national carriers.

Based upon the representations made in your request, the documents and information submitted in support of your request, and the information obtained during our own review, the Department has no present intention of challenging the proposal to develop and publicize the Model Broker Agreements. Making the model agreements available to the trucking industry is not likely to reduce competition. The model agreements do not contain any provisions specifying rates to be charged or other competitively significant terms, and use of the agreements or any of their provisions will be left to the determination of each company acting independently. Thus, carriers will remain free to compete by offering their individually determined contract terms and provisions to brokers. Moreover, the proposed Model Broker Agreements could have procompetitive effects by improving the efficiency of contract negotiations, potentially reducing shipping rates.

This letter expresses the Department's current enforcement intention and is issued in reliance on the information and representations contained in ATA's submissions. In accordance with our normal practices, the Department reserves the right to bring any enforcement action in the future should circulation of the Model Broker Agreements prove to be anticompetitive in purpose or effect.

This statement is made in accordance with the Department's Business Review Procedure 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be made publicly available within

Kenneth P. Ewing, Esq.
Page 3

30 days of the date of this letter, unless you request that part of the material be withheld in accordance with Paragraph 10(c) of the Business Review Procedure.

Yours sincerely,

A handwritten signature in black ink that reads "Thomas O. Barnett". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Thomas O. Barnett